

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DARRELL B. EASON,)
Petitioner,) CASE NO. C06-322-JCC-JPD
v.)
EVERETT MUNICIPAL COURT,) ORDER RE: PENDING MOTIONS
Respondent.)

)

This is a federal habeas action brought pursuant to 28 U.S.C. § 2254. This matter comes before the Court at the present time on petitioner's motion for a protective order requiring respondent to stay his sentencing hearing, on respondent's motion for relief from the deadline to file its reply brief in support of its amended answer, on respondent's motion to strike petitioner's third reply brief, and on petitioner's motion for appointment of counsel. The Court, having reviewed these motions, and the balance of the record, does hereby find and ORDER as follows:

(1) Petitioner's motion for a protective order requiring respondent to stay his sentencing hearing (Dkt. No. 20) is STRICKEN. It appears from the record that petitioner was sentenced in the Everett Municipal Court on September 27, 2006. Thus, petitioner's request to stay that hearing is now moot.

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1 (2) Respondent's motion for relief from the deadline to file its reply brief in support of
2 its amended answer (Dkt. No. 27) is GRANTED. Respondent's reply brief was received on
3 October 25, 2006, and has been made a part of the record.

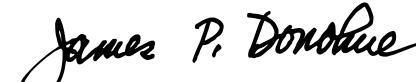
4 (3) Respondent's motion to strike petitioner's third reply brief (Dkt. No. 32) is
5 DENIED. Respondent, by way of the instant motion, asks this Court to strike a document
6 apparently entitled Petitioner's Third Reply Brief. The Court is in possession of no such
7 document. The Court did receive from petitioner on November 13, 2006, a document entitled
8 "Petitioner's Answer to Respondent's Reply in Opposition to 2254 Petition." However, it is not
9 clear that this is the document being referenced in respondent's motion. By this Court's count,
10 the November 13, 2006, is petitioner's second reply brief. And, while true that the briefing
11 schedule set by the Court does not allow for such a brief, nothing contained therein would appear
12 to prejudice respondent in any way. Moreover, petitioner attaches to this brief the jury
13 instructions which are relevant to his claims. As respondent failed to provide these documents as
14 a part of its own submission, the Court deems it necessary to ensure that they remain in the
15 record.

16 (4) Petitioner's motion for appointment of counsel (Dkt. No. 33) is DENIED. There
17 is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an
18 evidentiary hearing is required. *See Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988);
19 *Brown v. Vasquez*, 952 F.2d 1164, 1168 (9th Cir. 1992); and Rule 8(c) of the Rules Governing
20 Section 2254 Cases in the United States District Courts. At this juncture, it does not appear that
21 an evidentiary hearing will be required to resolve petitioner's claims. Thus, petitioner has no
22 right to have counsel appointed. The Court may exercise its discretion to appoint counsel for a
23 financially eligible individual where the "interests of justice so require." 18 U.S.C. § 3006A.
24 However, petitioner fails to demonstrate that the interests of justice are best served by
25 appointment of counsel in this matter at the present time.

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1 (5) The Clerk is directed to send copies of this Order to petitioner, to counsel for
2 respondent, and to the Honorable John C. Coughenour.

3 DATED this 13th day of December, 2006.

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6 JAMES P. DONOHUE
7 United States Magistrate Judge
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